



# AGO

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Our Ref: FOI/29/13

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## **Your FOI Request: FOI/29/13**

I am writing in response to the FOI request which you sent to this office on 1 February 2013.

We have now completed our assessment of your request and have concluded that some of the information which we hold properly falls to be released. That information is attached to this letter. We have concluded that exemptions under the Freedom of Information Act 2000 ("FOIA") apply to the remainder of the information we hold, and that it does not fall to be released. I have provided further details below.

I acknowledge that it has taken some time to respond to your request. As you will see from the explanation below, a number of qualified exemptions are engaged in respect of the information we hold and it has been necessary to assess a considerable volume of information. It has been necessary to consider the public interest considerations for and against disclosure very carefully, and in order to do so it has been necessary to seek and consider the views of a number of third parties.

You have requested an Internal Review of your FOI request of 4 January. We will write to you separately to inform you of the outcome of that Internal Review.

## **Your FOI request**

Your e-mail of 1 February 2013 asked for the following:

"all communications and minutes of meetings between officials of the Attorney General's Office and officials of both the Serious Fraud Office and the National Audit Office relating to the unauthorised payments made by the SFO to former staff members as set out in the AG's Parliamentary statement of December 4, 2012."

We wrote to you on 8 March to inform you that we did hold information falling within the terms of your request, however we stated that we would need more time to consider your request. We explained that various exemptions (including qualified exemptions) applied to the information that you have requested.

Our letter of 27 March explained that the Attorney General's Office had not yet reached a decision on the balance of the public interest and that we would need more time to complete that assessment. We subsequently wrote to you on various occasions to inform you that we were still considering the public interest balance.

### **Released Information**

We have now completed our assessment of the public interest balance having consulted a number of interested parties. Having undertaken that assessment, we have concluded that some of the information that we hold properly falls to be released. That information is attached to this letter. Where we have decided to withhold information we have, where possible, summarised the substance of the information in a narrative account which is also attached.

We have redacted contact details and have redacted the names of staff who are below the rank of Senior Civil Service (or equivalent). This information is exempt under section 40 (personal information) of the Freedom of Information Act (FOIA), as the information constitutes third party personal data which it would not be fair to disclose. We explain the basis for that further below.

Finally, please note that the information we have released reflects only the information held on AGO files.

### **Withheld Information**

We have decided that the remainder of the information which we hold does not fall to be disclosed. We explain the reasons for that below. The information which we have decided to withhold ("the Withheld Information") comprises:

- AGO correspondence with Cabinet Office and SFO re: arrangements to make an early pension payment to Richard Alderman. This is personal data; the payment was authorised; the amount paid was disclosed in the WMS of 4 December 2012; and information as to the circumstances of the payment are set out in the narrative. Withheld in reliance on section 36(2)(b)(i) and (ii) and (c) and section 40(2).
- Richard Alderman's note left for the NAO setting out his reasons for making the payments. This note contains the personal data of a number of individuals, largely in the form of the opinions of Richard Alderman; the AGO and SFO do not agree with those opinions or that they are substantiated, the note was referred to by the PAC in their report but not published. We consider that any public interest

in its disclosure is outweighed by considerations of fairness to, and of damage and distress that might be caused to, individuals by its disclosure – section 40(2).

- Draft of the Tim Hurdle report with minor immaterial changes from the version published - Section 36(2)(b)(i) and (ii) and (c).
- Copy of Phillipa Williamson's draft compromise agreement, final version of confidentiality clause and covering emails. All contain personal data. The substance of the payments is in the public domain and the public interest in disclosing the agreement itself does not outweigh the entitlements and interests of the data subject. Section 40(2).
- Various information covered by Legal Professional Privilege – section 42.
- Draft versions of the SFO's Annual Report and Accounts and covering emails concerning minor drafting points - Section 36(2)(b)(i) and (ii) and (c).
- Draft press briefing and covering emails discussing approach to press handling of the publication of the SFO's Annual Report and Accounts - Section 36(2)(b)(i) and (ii) and (c).
- Various communications between officials in this Office, the SFO and Cabinet Office preparatory to responding to various Parliamentary correspondence; draft responses; and final responses to Parliamentary correspondence - Section 36(2)(b)(i) and (ii) and (c).

The Withheld Information is therefore subject to the following exemptions:

- Section 36(2)(b) and (c)
- Section 40
- Section 42

The exemptions under section 36 and 42 and, for certain purposes, section 40 are qualified exemptions (i.e. they are subject to a public interest test). This means that information falls to be withheld under those exemptions if we are satisfied that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The exemption under section 40 is otherwise an absolute exemption (i.e. it is not subject to a public interest test).

I have set out below a brief explanation of why the exemptions above are engaged and why we have concluded that the public interest in maintaining the relevant exemption outweighs the public interest in disclosing the information. In considering whether to release information, we have considered whether we could disclose the information in redacted form. You will see that some of the information which we have disclosed has been redacted, either for public interest reasons or because parts of disclosed information relate to matters other than those about which you have requested disclosure.

#### **Section 36(2)(b)(i) and (ii) – Free and frank exchange of views and advice**

These exemptions apply where disclosure of the information would or would be likely to inhibit the free and frank provision of advice (36(2)(b)(i) or exchange of views

(36(2)(b)(ii)). In this case, some of the information we hold comprises internal communications among officials in the AGO, and communications between officials in the AGO and officials in the SFO and other departments, which were for the purpose of providing advice or exchanging views on the publication of the SFO's Annual Report and Accounts 2011-12, and on subsequent Parliamentary and other inquiries and correspondence in relation to those accounts, and the payments made to senior staff recorded in them. As such, they are subject to the exemptions under section 36(2)(b)(i) or (ii) respectively.

There is an important public interest in officials being able to exchange views and provide advice to Ministers and to other officials in a free and frank manner. In particular, this is important to ensure that decisions are made in the light of properly considered advice which takes account of all of the relevant issues. This is all the more important in relation to a case concerning a matter of significant public concern as is the case here. Disclosure of such communications would be likely to inhibit the ability of officials to exchange views and provide advice on such matters in future. That would in turn have a detrimental effect on decision-making and policy development. That is not in the public interest.

There is also an important public interest in ensuring that the public understand how the government approaches such matters and in promoting transparency in relation to the operation of government departments.

On balance, we have concluded that the enhanced public interest in this case favours the disclosure of a substantial proportion of such information. However in relation to some of the information, we have concluded that the balance of public interest favours withholding the relevant information, on the grounds that it adds insufficient of substance to the narrative of events or to public understanding of the conduct of business to outweigh the public interest in safeguarding the free exchange of communications between officials in support of their advisory functions.

### **Section 36(2)(c) – Prejudice to the effective conduct of public affairs**

This exemption applies where disclosure of the relevant information would or would be likely otherwise to prejudice the effective conduct of public affairs. Some of the information we hold comprises emails between officials of AGO and SFO and other departments in order to gather information to respond to Parliamentary correspondence and brief Ministers, checking the accuracy of data, drafting responses and press briefings.

There is an important public interest in officials being able to provide full and frank briefing which ensures that Ministers and other relevant officials are kept fully informed of all of the relevant facts. In some cases, such briefing may include sensitive or confidential information. Disclosure of such briefing would inhibit the ability of officials to

provide such briefing which would in turn be likely to prejudice the effective conduct of public affairs. That would not be in the public interest.

There is also an important public interest in ensuring that government operates in a transparent and accountable manner.

On balance, we have concluded that the enhanced public interest in this case favours the disclosure of a substantial proportion of such information. However in relation to some of the information, including in particular drafts where the final version has been made public, we have concluded that the balance of public interest favours withholding the relevant information, on the grounds that it adds insufficient of substance to the narrative of events or to public understanding of the conduct of business to outweigh the public interest in safeguarding the ability of Ministers and officials to receive full and considered briefing and to prepare their public communications as effectively as possible.

#### **Section 40 – Personal Data**

Some of the information we hold comprises personal data. Because of the enhanced public interest in this case in ensuring as much transparency and accountability in relation to the conduct and interests of certain individuals, we have concluded that it is proper to disclose a substantial amount of information which comprises personal data (including information in relation to employment status and pension rights) notwithstanding the interests and expectations of the individuals involved, on the grounds that in all the circumstances it is properly in the public interest and not unfair to the individuals to do so.

However, we have decided to withhold some of the personal data which we hold. In broad terms we have withheld five categories of personal data:

- a) Contact details;
- b) The names of individuals who are junior civil servants (or the equivalent);
- c) AGO correspondence with Cabinet Office and SFO re: arrangements to make an early pension payment to Richard Alderman.
- d) Richard Alderman's note left for the NAO setting out his reasons for making the payments.
- e) Copy of Phillippa Williamson's draft compromise agreement and associated correspondence.

This is information which falls within section 40(2) FOIA.

Section 40(2) FOIA provides that information is exempt if the information is the personal data of a person other than the requester and disclosure of the information would breach any of the data protection principles (by virtue of section 40(3) FOIA). We consider that

disclosure of this withheld information would breach the First Data Protection principle. That principle requires that data must be processed fairly and lawfully.

In deciding whether disclosure would in all the circumstances be fair and lawful we have necessarily sought and considered the views of those affected. In the light of those consultations and the other factors listed below, we have concluded that we should withhold some of the personal data that we hold on the basis that disclosure of that data would not in all the circumstances be fair. In reaching this conclusion, we have taken account of a range of factors including: the legitimate public interest in knowing about the data, the extent to which disclosure adds to the sum of public understanding of events, the individuals' reasonable expectations of what would happen to their personal data; the seniority of the persons in question (more senior officials should expect their positions to carry a greater level of accountability); and whether disclosure would cause any unnecessary or unjustified damage not warranted by the public interest.

## **Section 42**

Some of the information we hold comprises legal advice obtained by the Serious Fraud Office. It is therefore covered by Legal Professional Privilege, which vests in the SFO and which has not been waived by them. Section 42 FOIA provides that information is exempt if a claim to legal professional privilege could be maintained in legal proceedings. It is a qualified exemption. Legal Professional Privilege (LPP) is a rule of litigation that protects, in general terms, confidential communications between lawyers and their clients. The principle of LPP has been established by the Courts in recognition of the fact that there is an important public interest in a person being able to consult his or her lawyer in confidence.

Again this exemption is subject to the public interest test. There is a very strong public interest in protecting information to which legal professional privilege applies. This reflects the role of legal professional privilege as a fundamental condition on which the administration of justice as a whole rests and the importance of public authorities being able to obtain free and frank legal advice. There appear to us to be no reasons in this case requiring those considerations to be set aside in the public interest. We consider that, in all the circumstances of the case, the public interest in maintaining this exemption so that the Law Officers and their Departments can receive legal advice in relation to exercise of their functions clearly outweighs the public interest in disclosing this information and our decision is therefore to withhold the information.

We are therefore withholding all material covered by LPP.

## **Complaints**

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to: Rowena Collins Rice at the above address.

Please remember to quote the reference number above in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,